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Record

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510

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April 23, 1986

The Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505


Dear Bill:

I've enclosed a copy of my speech to the Association of Former Intelligence Officers on congressional oversight of intelligence. I must say it was gratifying to have so many AFIO members come up afterward and say how much they agreed with my basic points. It was a most enjoyable event.

Sincerely,


Patrick Leahy
Vice Chairman

Enclosure

They are an impressive group - you have a lot of fans there.


U.S. SENATOR PATRICK LEAHY

VERMONT

**CONGRESSIONAL OVERSIGHT OF INTELLIGENCE--HOW ARE WE DOING?
REMARKS BY SENATOR PATRICK LEAHY
VICE CHAIRMAN, SENATE SELECT COMMITTEE ON INTELLIGENCE
TO THE ASSOCIATION OF FORMER INTELLIGENCE OFFICERS
APRIL 21, 1986**

The question I want to discuss today is whether Congressional oversight of intelligence is working.

Broadly speaking, I believe the answer is Yes, particularly as it pertains to the intelligence committees' responsibility with respect to regular oversight of intelligence activities which could affect the rights of Americans. The answer is also in the affirmative regarding the annual intelligence budget and long-term planning, the quality of intelligence analysis and production, counter intelligence and security programs, and routine administrative and organizational matters.

But there are serious difficulties in the intelligence oversight process in at least three respects:

- leaks, who is responsible for them and what is the significance of the leak problem;
- timeliness of notification by the Intelligence Community of significant intelligence activities; and,
- the role and handling of covert action programs, above all, covert paramilitary programs.

Unfortunately, there are few signs of a disposition on the part of key Intelligence Community leaders to overcome these problems by working cooperatively with the Intelligence Committees. Reflecting this, relations between the Intelligence Committees and elements of the Intelligence Community, primarily the CIA, have become somewhat strained.

Before going more deeply into the current problems in intelligence oversight, let me briefly review the origins and purpose of the current system.

As I am sure all of you know--some perhaps from experience--Congress set up the present intelligence oversight committees as a result of investigations in the mid-1970s of intelligence abuses. The Senate Select Committee on Intelligence was created in 1976 after conclusion of the Church Committee investigations.

Under Senate Resolution No. 400 adopted that year, the Senate Committee is to be kept "fully and currently informed of all intelligence activities." The Committee was charged with broad oversight responsibilities:

- To authorize the yearly budget for national intelligence programs;
- To evaluate the quality of intelligence analyses;
- To review policies governing intelligence activities especially those which affect the rights of Americans; and
- To be notified of all intelligence programs and activities, including covert action in support of U.S. foreign policy objectives.

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Since its formation, the Committee has gone far in developing the groundrules for effective oversight. A major milestone was the Intelligence Oversight Act of 1980 (Title V of the National Security Act). It formalized the requirement that the oversight committees are to be kept fully and currently informed of all intelligence activities.

The Oversight Act also provided that the Intelligence Committees should be informed of "significant anticipated intelligence activities," including those that require a Presidential Finding. This, of course, refers specifically to covert action programs. It is also clear from the statute and its history that the requirement of prior notice was also intended to apply to other especially sensitive intelligence operations.

The Oversight Act also provided ways to protect the security of especially sensitive intelligence activities. Notice of significant anticipated intelligence programs can, in special cases, be limited to the Leaders of the House and Senate and the Chairmen and Vice Chairmen of the Intelligence Committees. Also, prior notice can be waived in extraordinary circumstances. Both these powers have been only very rarely exercised.

Surely, the most important security protection in the Oversight Act--and a very significant political achievement--was the reduction of oversight jurisdiction from eight committees to just two--the Senate and House Intelligence Committees.

Unfortunately, the latter protection has been eroding somewhat over the past two or three years. As certain intelligence matters have received more and more public attention, other committees have been expressing greater interest. Also, parts of the Intelligence Community have, when it suited their interest, themselves gone to other committees in an effort to circumvent opposition in the Intelligence Committee.

Cooperation in the protection of intelligence sources and methods has been excellent. The Committee has insisted on receiving the information, including some highly sensitive information, required to perform its mission. This is particularly true in our detailed annual budget review. On the other hand, the Committee has refrained from seeking information more detailed than necessary to support oversight.

The need-to-know principle is rigorously applied to Committee staff, and access to the most sensitive information is very tightly controlled. There is full documentation of everyone on the Committee--members as well as staff-- who have had access to intelligence materials or who have attended briefings.

Until recently -- aside from some well-publicized lapses, such as the mining of Nicaragua's harbors -- the Intelligence Community has done a fairly good job of keeping the Select Committee on Intelligence informed about developments involving intelligence. Far too often in the last year or so, however, we on the Committee have learned first of significant intelligence matters from the press -- followed quickly by a breathless call from the legislative liaison office at the CIA, DIA or elsewhere trying to head off our angry reaction. This is of serious concern to me and other members of the Intelligence Committee, and the source of increasing complaints.

Frankly, there is growing concern about the willingness of some Intelligence Community leaders to comply with the most basic requirement of the Oversight Act -- that is, to keep the

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Committee "fully and currently informed of all intelligence activities."

Why does this concern exist?

Our current problems began with covert U.S. involvement with the Nicaraguan Contras in early 1983, and reached a peak with the revelations of 1984 that the CIA had been involved in mining Nicaraguan harbors. But strains between the Intelligence Community and the Intelligence Committee have been exacerbated by increasing press attention to intelligence matters generally.

The reason for this is primarily the widespread information on purported covert actions--including recent stories about Lebanon, Libya, Afghanistan, Angola, and other countries. There has inevitably also been a great deal of attention focused on the astonishing run of espionage cases during 1985--including the Walker spy ring, the Pollard and Chin cases, the disappearance of Edward Howard and the spectacular redefection of Vitaly Yurchenko.

The hemorrhaging of information about all these matters has caused anger, dismay and frustration, both in the Intelligence Committees and in the Intelligence Community.

No one is more concerned than I about these leaks of information about intelligence matters. Such leaks of privileged information threaten the foundation of successful intelligence and the integrity of the oversight process, as well as undermine national security.

What is especially disturbing to me is the perception that a great deal of the information comes from Congressional sources. Equally disturbing is the fact that this perception appears to be deliberately fostered by those in the Administration--and in the Intelligence Community, as well--who see an opportunity to weaken intelligence oversight.

In fact, I believe nearly all leaks of sensitive information come from the Executive Branch. This tendency to conduct policy debate or advance political interests through leaking classified information existed in the Ford and Carter Administrations. But in my nearly twelve years in Congress, I have never seen it on the scale practiced by government officials under the present Administration.

You do not have to be a great reader of tea leaves to see that most stories about alleged covert actions spring from opponents or proponents of programs who are located in government departments, even the intelligence agencies themselves. The many leaks about recent espionage and defection cases appear to stem primarily from jockeying among intelligence and law enforcement officials trying to protect their reputations in the face of public outrage over mishandling or incompetence.

Perhaps the most extraordinary leaks of intelligence information have concerned Libyan responsibility for international terrorism and U.S. activities against Libya. These appear designed merely to cultivate public support for Administration actions toward Libya, or to deflect criticism.

As for the Intelligence Committees, I am unaware of any deliberate unauthorized disclosure of sensitive intelligence information by Members or the staffs. I agree with the statement on this by Senator Barry Goldwater, former Chairman of the Senate Intelligence Committee. In a speech on the Senate floor on September 14, 1984, he said:

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"The Senate Select Committee on Intelligence has done a very good job of overseeing the intelligence community, and we have an excellent record on security over the years. Although some people refer to leaks from the Oversight Committees, they do not provide one single documented example."

Critics of Congressional oversight have, however, tried to blame leaks on the Intelligence Committees in order to attack intelligence oversight. Some officials are quite open about their desire to cut back on bothersome Congressional "meddling" and to reduce checks on the President's freedom of action in ordering intelligence operations, especially covert action, without Congressional scrutiny--and opposition. Their nostalgia for the days before regular Congressional oversight is all too plain.

The rationale for this ill-considered attack evidently is a belief that intelligence oversight weakens the President's flexibility and effectiveness in using covert action in pursuing foreign policy goals. At its worst, it is an attempt to discredit the institutional guardians that refuse to countenance a wholesale loosening of the constraints on covert action and other sensitive operations.

The leak problem, while serious indeed, is, however, only a symptom of the underlying source of differences between the Intelligence Committee and elements of the Executive Branch.

The more fundamental cause of the current strained relationship between the Intelligence Committee and parts of the Intelligence Community is growing disagreement over the Administration's clear determination to make ever greater use of covert paramilitary operations as part of what is now being called the "Reagan Doctrine." In essence, this is a strategy of seeking to undermine Communist regimes through insurgency wherever possible.

Indeed, to call this new use of paramilitary action "covert" is a misnomer. The Administration makes no serious effort to keep these activities secret, and in fact appears to ensure that they become public as part of its larger strategy to roll back Communist regimes.

In identifying covert paramilitary action as a source of disagreement, I do not purport to speak for the views of other Members of the Intelligence Committee. I do believe, however, that whether or not individual members support or oppose particular covert action programs, the Committee as a whole is becoming increasingly uncomfortable with trying to shoulder the entire responsibility of speaking for the Senate on issues which are of such great foreign policy consequence.

Chairman Hamilton of the House Intelligence Committee has made clear his members also feel this problem keenly. Speaking of the press reports on deepening U.S. involvement in the Afghan and Angolan insurgencies, he said:

"I don't think it is wise to proceed on these highly controversial foreign policy decisions without the support of Congress. This is not a covert action in the ordinary understanding of the term, this is a war. That is the question: 'Should the United States enter into support of one side in the war in Angola?' It is a far cry from the sorts of situations Congress had in mind when it set up the procedure for handling covert actions."

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The only power of the Intelligence Committees over covert action initiatives funded from the CIA Contingency Fund is to be kept informed--not to approve or disapprove. As watchdogs over the conduct of intelligence programs, the Intelligence Committees are not an acceptable substitute for the entire Congress on programs that amount to U.S. involvement in foreign wars. In a democracy such as ours, a commitment of such far-reaching importance must be debated openly in Congress, with recorded votes so that Members of both Houses can be held accountable by the American people. There must also be active scrutiny by other congressional committees, including Foreign Relations, Armed Services, and Appropriations.

It is my considered judgment that the new reliance on covert paramilitary action as a normal instrument of foreign policy--even as a substitute for foreign policy--has strained the current oversight process to the breaking point. It involves a most basic question which can only be resolved in open debate, with the full awareness of the American people. That question is: Can a democracy like the United States engage in large scale, so-called "covert" paramilitary operations, using our intelligence agencies as instruments in waging proxy wars against the Soviet Union or its clients?

Very soon, if the Administration continues on its present course, we are going to have to answer that question. Failure to do so will make covert paramilitary operations a running sore in the side of the CIA, destroy the public trust so painfully rebuilt after the abuses and failures of the past, and force a complete reexamination of the present system of Congressional oversight.